



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 30, 1995

Mr. William J. Philbin  
College System Counsel  
Houston Community College System  
P.O. Box 7849  
Houston, Texas 77270-7849

OR95-1340

Dear Mr. Philbin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31615.

The Houston Community College System ("HCCS") received a request for documents pertaining to HCCS's study to "right-size" its administrative personnel.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.111 and 552.101 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client.<sup>2</sup> In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. However, section 552.107(1) is waived by public disclosure of the information sought to be withheld. Open Records Decision No. 630 (1994). Therefore, if the January 19, 1995, meeting was open under the Open Meetings Act, HCCS may not withhold the agenda item under section 552.107(1). This particular agenda item may be withheld only if the agenda is a certified agenda of a closed executive session under the Open Meetings Act. In that event, the entire agenda must be

---

<sup>1</sup>As HCCS did not submit to this office a copy of the request despite our request to do so, we are assuming that HCCS's description of the request is accurate.

<sup>2</sup>We note that you claimed the attorney-client privilege under section 552.101. It is properly claimed under section 552.107(1).

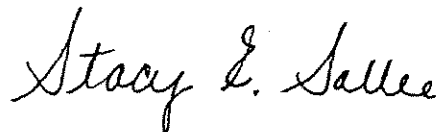
withheld. Gov't Code § 551.104(c). Otherwise, section 552.107(1) has been waived and that agenda item may not be withheld.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. The information contained in these documents relates to a personnel matter, *i.e.*, the re-structuring of certain positions at HCCS. Therefore, section 552.111 does not except the requested information from required public disclosure.

Finally, you claim that section 552.101 of the Government Code excepts from disclosure the salaries of HCCS's employees. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law and constitutional privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has previously held that the salaries of public employees involve the expenditure of public funds and therefore are not excepted from disclosure. *See* Open Records Decision Nos. 545 (1990), 373 (1983). Therefore, HCCS may not withhold the requested salary information under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/rho

Ref.: ID# 31615

Enclosures: Submitted documents

cc: Ms. Patsy Flowers  
(w/o enclosures)